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2
3 UNITED STATES DISTRICT COURT
4 SOUTHERN DISTRICT OF NEW YORK

5 VICTORIA MALONE,

6 Plaintiff,

7 vs.

8 TOWN OF CLARKSTOWN, WAYNE BALLARD in his
9 Personal and official capacity as
10 Clarkstown Highway Superintendent; FRANK
11 DIZENZO, in his personal and official
12 Capacity as Clarkstown Highway Superintendent;
13 ANDREW LAWRENCE, in his personal and official
14 capacity; DAVID SALVO, in his personal and
15 official capacity; ROBERT KLEIN, in his
16 personal and official capacity; TUCKER
17 CONNINGTON, in his personal and official
18 capacity; and BRIAN LILLO, in his personal and
19 official capacity,

20 Defendants.
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26 REMOTE DEPOSITION OF ROBERT KLEIN

27 Friday, December 4, 2020

28 Reported by:
29 LISA M. MURACO
30 JOB NO. 187335

<div>Page 2</div> <div>1</div> <div>2</div> <div>3 Friday, December 4, 2020</div> <div>4 10:00 a.m.</div> <div>5</div> <div>6</div> <div>7 REMOTE Deposition of ROBERT KLEIN,</div> <div>8 held VIA ZOOM, before LISA M. MURACO, a</div> <div>9 Notary Public of the State of New York and</div> <div>10 New Jersey.</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 3</div> <div>1</div> <div>2 A P P E A R A N C E S:</div> <div>3 (VIA VIDEOCONFERENCE)</div> <div>4</div> <div>5 POLLOCK COHEN</div> <div>6 Attorneys for Plaintiff</div> <div>7 60 Broad Street</div> <div>8 New York, New York 10004</div> <div>9 BY: STEVE COHEN, ESQ.</div> <div>10</div> <div>11</div> <div>12 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER</div> <div>13 Attorneys for Defendants Town of</div> <div>14 Clarkstown, Tucker Connington, and David</div> <div>15 Salvo</div> <div>16 1133 Westchester Avenue</div> <div>17 White Plains, New York 10604</div> <div>18 BY: JOHN FLANNERY, ESQ.</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>
<div>Page 4</div> <div>1</div> <div>2 A P P E A R A N C E S (CONTINUED):</div> <div>3 (VIA VIDEOCONFERENCE)</div> <div>4</div> <div>5 LAWRENCE A. GARVEY & ASSOCIATES</div> <div>6 Attorneys for Defendant Frank DiZenzo</div> <div>7 235 Main Street</div> <div>8 White Plains, New York 10601</div> <div>9 BY: LAWRENCE GARVEY, ESQ.</div> <div>10</div> <div>11</div> <div>12 McDERMOTT & McDERMOTT ATTORNEYS AT LAW</div> <div>13 Attorneys for Defendant Robert Klein</div> <div>14 293 Route 100</div> <div>15 Somers, New York 10589</div> <div>16 BY: MICHAEL McDERMOTT, ESQ.</div> <div>17</div> <div>18</div> <div>19 LYONS McGOVERN</div> <div>20 Attorneys for Defendant Brian Lillo</div> <div>21 399 Knollwood Road</div> <div>22 White Plains, New York 10603</div> <div>23 BY: KYLE McGOVERN, ESQ.</div> <div>24</div> <div>25</div>	<div>Page 5</div> <div>1</div> <div>2 A P P E A R A N C E S (CONTINUED):</div> <div>3 (VIA VIDEOCONFERENCE)</div> <div>4</div> <div>5</div> <div>6</div> <div>7 ALSO PRESENT:</div> <div>8 Helen He, Intern for Pollock Cohen</div> <div>9 Leslie Kahn, Town Attorney, Town of Clarkstown</div> <div>10 Charles Connington, Town of Clarkstown Highway</div> <div>11 Department</div> <div>12 Frank DiZenzo, Clarkstown Highway</div> <div>13 Superintendent</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>

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2 believe I said: Hockey fight. And I grabbed

3 the back of her sweatshirt jacket and I pulled

4 it up over her head.

5 Q. Did this happen one time or more

6 than one time?

7 A. I believe that was the only time.

8 Q. Okay.

9 So if she testified that it happened

10 two times?

11 A. Yeah, I don't remember a second

12 time.

13 Q. Okay.

14 Were you intoxicated when this

15 happened?

16 A. No.

17 Q. Okay.

18 Is pulling a woman's shirt over her

19 head during the workday, workplace appropriate

20 behavior?

21 MR. McDERMOTT: Objection.

22 MR. FLANNERY: Objection.

23 MR. McDERMOTT: It wasn't -- there

24 was not testimony that he pulled her shirt

25 over her head.

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1 R. KLEIN

2 MR. McDERMOTT: Objection.

3 MR. FLANNERY: Objection.

4 MR. McDERMOTT: I'm confused by the

5 questioning. Because the witness is

6 testifying that she -- that there was a

7 sweatshirt jacket. Okay.

8 And you're -- it sounds like you're

9 questioning that she only had a bra on

10 under the sweatshirt jacket.

11 MR. COHEN: Yeah. I'm sorry.

12 MR. McDERMOTT: Clarify the

13 questioning.

14 MR. COHEN: Sure.

15 BY MR. COHEN:

16 Q. If Tori testified that she only had

17 a sports bra on underneath --

18 MR. McDERMOTT: Underneath what?

19 MR. COHEN: That jacket, that

20 sweatshirt jacket.

21 Q. Would you have any reason to

22 disagree with her?

23 A. Yeah. Who only wears a sports bra

24 under a sweatshirt jacket?

25 Q. Okay.

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1 R. KLEIN

2 MR. COHEN: What -- forgive me.

3 BY MR. COHEN:

4 Q. How did you describe it, Mr. Klein?

5 A. Hockey fight.

6 Q. He's pulling the shirt over. What

7 she said -- what you read from her notes.

8 Prior, he had ripped my shirt off

9 using a hockey move, May 3rd.

10 A. That's not correct.

11 Q. Okay.

12 So what is correct?

13 A. I pulled her sweatshirt jacket up

14 over her head.

15 Q. Okay.

16 Was she wearing anything underneath?

17 A. Yeah, she had a shirt on.

18 Q. She had a shirt on?

19 A. Yes.

20 Q. And if she testified that she didn't

21 have a shirt on?

22 A. She testified she did not have a

23 shirt on?

24 Q. Yeah, that it was just her bra. A

25 sports bra.

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1 R. KLEIN

2 Is it -- in either case, is pulling

3 someone's sweatshirt -- you pulled it over her

4 head?

5 A. Yes, I did that.

6 Q. You did that.

7 In a hockey move?

8 A. Yes.

9 Q. Is that workplace appropriate

10 behavior?

11 MR. FLANNERY: Objection.

12 MR. McDERMOTT: Objection.

13 A. Probably not.

14 Q. Did you view it as a joke?

15 A. Yes, we were horseplaying.

16 Q. Did she view it as a joke?

17 A. We were horseplaying.

18 Q. Okay. All right.

19 Third paragraph, if you read that

20 aloud.

21 A. The Brian Lillo one?

22 Oh, no, no, no. Cutting down --

23 Q. Above Brian Lillo.

24 A. (As read): Cutting last two pine

25 trees on Kendall, he tackled me to the ground

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1 R. KLEIN

2 and slapped my butt multiple times.

3 Q. Do you have any recollection of

4 that?

5 A. Yes.

6 Q. What happened?

7 A. She had my rake. I wanted my rake

8 back. She refused to give it back. So I ran

9 up to her to get it. And she started running

10 away.

11 And she had her sweatshirt jacket on

12 again. I grabbed the hood. She fell to the

13 ground.

14 Q. And then?

15 A. It was in the yard.

16 Q. And then what happened?

17 A. And then she started kicking and

18 screaming. And I sat on her legs and I smacked

19 her butt.

20 Q. Okay.

21 Horseplay?

22 A. Yup.

23 Q. Okay.

24 Did she complain about it?

25 A. No.

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1 R. KLEIN

2 Number 5.

3 (Exhibit 5, photo, marked for

4 identification.)

5 MR. COHEN: And I don't remember --

6 forgive me. I got to look at it.

7 What the -- this doesn't have --

8 this is called Exhibit B, and I believe

9 this is from the original complaint.

10 BY MR. COHEN:

11 Q. Do you recall -- have you ever seen

12 this photo, before?

13 A. Yes.

14 MR. McDERMOTT: Just put it up on

15 the screen.

16 MR. COHEN: Oh, I'm sorry.

17 Helen, could you put it up on the

18 screen.

19 I'm sorry. Go ahead.

20 Q. Have you ever seen this photo,

21 before?

22 A. Yes.

23 Q. Where did you see it?

24 A. With my attorney.

25 Q. Okay.

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1 R. KLEIN

2 Q. She didn't say anything to you?

3 A. She might have said: Blue, stop.

4 Q. Okay.

5 But this was all in good fun?

6 A. Yes.

7 Q. Workplace appropriate behavior?

8 MR. McDERMOTT: Objection.

9 MR. FLANNERY: Objection.

10 A. Probably not.

11 Q. I'm sorry. I didn't hear the

12 answer.

13 A. Probably not.

14 Q. Okay.

15 Pivoting a bit.

16 What's a lopper, Mr. Klein?

17 A. A lopper is for trimming tree

18 branches.

19 Q. And how does it do that?

20 Is it a blade or is it something

21 else?

22 A. It's like a trimmer. It's sort of

23 like a pair of scissors.

24 Q. Okay.

25 I'm going to show you Exhibit

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1 R. KLEIN

2 Do you know whose leg it is?

3 A. That's Tori's.

4 Q. And you see the scratch mark in the

5 middle?

6 A. Yes.

7 Q. Do you know how it came about?

8 A. Yes.

9 Q. How did it come about?

10 A. It wasn't with a pair with loppers.

11 It was with a pole saw.

12 Q. Okay.

13 So what happened?

14 A. She was standing there. I had the

15 pole saw in my hand. She has all these little

16 strings coming off her jeans that she wore

17 every day. Big holes in them.

18 And I went to grab one of the little

19 strings, and I believe she turned a little bit

20 and the blade caught her leg.

21 Q. Okay.

22 So it was an accident?

23 A. Yes.

24 Q. What were you doing grabbing the

25 strings?

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1 R. KLEIN

2 BY MR. COHEN:

3 Q. Would you say to somebody, come

4 closer, when you're about to use a chainsaw?

5 MR. FLANNERY: Objection.

6 MR. McGOVERN: Objection.

7 MR. COHEN: I'm sorry. What you did

8 say? I didn't hear your answer.

9 A. No.

10 Q. Why wouldn't you?

11 A. Because it could be, possibly be

12 dangerous.

13 Q. Okay.

14 I want to show you Exhibit 1B, which

15 is another part of the amended complaint.

16 Okay.

17 I want to show you paragraph 42.

18 (Exhibit 1B, part of amended

19 complaint, marked for identification.)

20 BY MR. COHEN:

21 Q. Could you read that aloud, please.

22 A. (As read): On one occasion, while

23 Lillo was removing a tree, he deliberately

24 positioned Ms. Malone so that she would be hit

25 by wood chips and shavings discharged by his

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1 R. KLEIN

2 involving Lillo removing a tree and

3 deliberately positioning Ms. Malone so that she

4 would be hit by wood chips and shavings?

5 A. No.

6 MR. McGOVERN: Objection.

7 Q. Okay.

8 So let's go to Exhibit Number 8,

9 which is Town 4441 and 4534. And this is a

10 transcript of an interview you gave in July of

11 2018.

12 (Exhibit 8, interview transcript,

13 marked for identification.)

14 MR. McDERMOTT: I'm sorry. What

15 page, Steve?

16 MR. COHEN: I'm going to go there.

17 Q. Do you recall -- have you looked at

18 this document before?

19 A. The interview?

20 Q. Yeah.

21 A. Very briefly.

22 Q. Did you look at it before coming

23 here today?

24 A. Very briefly.

25 Q. Okay.

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2 chainsaw running at high speed. This was not a

3 careless or negligent act. It was a deliberate

4 physical assault.

5 McDermott, who saw the incident,

6 taunted Ms. Malone by asking her if she needed

7 help getting wood chips and dust out of her

8 shirt.

9 Lillo also in 2018, harassed,

10 humiliated, and verbally abused Ms. Malone by

11 stating in front of the rest of the crew, in

12 substance, that only a mentally challenged

13 person would hit on her.

14 Q. Do you recall an incident with

15 Mr. Lillo involving a chainsaw?

16 MR. McGOVERN: Objection.

17 MR. FLANNERY: Objection.

18 MR. McDERMOTT: Objection. An

19 incident involving a chainsaw. That's so

20 broad, Steve.

21 BY MR. COHEN:

22 Q. Okay.

23 Let's go back to the very first

24 sentence in number 42.

25 Do you remember an incident

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1 R. KLEIN

2 Why don't we go down to -- I think

3 it's page 19 of this document, Town 4459.

4 A. Page 19, you said?

5 Q. Yeah, 19.

6 Read to yourself from the top.

7 A. Okay.

8 (Document review.)

9 Q. In fact, why don't you go back a

10 page so you can see the context. Read to

11 yourself starting on page 18.

12 (Document review.)

13 Q. Okay.

14 Have you read that page?

15 A. I read 18.

16 Q. Okay. Now, I want you to read 19.

17 (Document review.)

18 A. Okay.

19 Q. Do you remember giving this

20 testimony?

21 A. Not particularly, no.

22 Q. So now that you've had a chance to

23 reread it, do you recall the incident any

24 better?

25 MR. McGOVERN: Objection.

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1 R. KLEIN

2 orders.

3 Q. Okay.

4 Did you intervene in this situation,

5 where Brian said: Come closer?

6 MR. McGOVERN: Objection.

7 MR. FLANNERY: Objection.

8 A. No, I don't believe I did. No.

9 Q. Okay.

10 And why was that?

11 A. I couldn't give you an answer right

12 now. I don't really recall.

13 Q. Do you recall if Tori was visibly

14 upset by -- withdrawn.

15 First, do you know if Tori got hit

16 by chips during this incident?

17 A. Yes.

18 Q. Was she visibly upset by it?

19 A. I do believe. I don't remember her

20 exact reaction.

21 Q. But you believe she was upset?

22 A. I do believe.

23 (Multiple speakers.)

24 Q. And what makes you -- I'm sorry. I

25 cut you off. I apologize.

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1 R. KLEIN

2 Q. Okay.

3 If Tori testified that he taunted

4 her by asking if she needed help getting the

5 shavings out of her shirt, would that surprise

6 you?

7 MR. FLANNERY: Objection.

8 MR. McGOVERN: Objection.

9 MR. McDERMOTT: Objection.

10 A. Yes.

11 Q. It would surprise -- why would it

12 surprise you?

13 MR. FLANNERY: Objection.

14 A. Why would it surprise me?

15 Q. Yeah.

16 A. I don't believe Chris would say

17 that.

18 Q. Okay.

19 And do you have any recollection of

20 who else was there?

21 A. I -- no. I believe it was me,

22 Chris, and Brian. I think Tori might have been

23 driving the roll-off that day.

24 Q. Okay.

25 Doesn't the town have a policy to

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1 R. KLEIN

2 A. I don't know.

3 Q. Okay.

4 What makes you recollect that she

5 was upset?

6 A. I think she just, like, yelled at

7 him or something. I don't know.

8 Q. Okay.

9 And what did you do?

10 A. I do not remember.

11 Q. Do you remember your reaction at

12 all?

13 A. No.

14 Q. Did you laugh?

15 A. I don't know.

16 Q. Okay.

17 If you testified during this 2018

18 interview that you laughed, would that refresh

19 your recollection?

20 MR. FLANNERY: Objection.

21 A. No.

22 Q. Okay.

23 Did Chris McDermott see this, as

24 well?

25 A. I don't recall who was there.

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2 wear safety equipment when operating near a

3 chainsaw?

4 MR. FLANNERY: Objection.

5 A. I don't know.

6 Q. Would it make sense to you, as a

7 foreman, to have a policy of people wearing

8 hard hat and safety glasses?

9 A. Yes.

10 Q. Okay.

11 And she was wearing neither,

12 correct?

13 MR. FLANNERY: Objection.

14 A. I believe she wasn't.

15 Q. Okay.

16 In fact, you testified on page -- if

17 you look at 4465, that she was wearing neither?

18 A. Okay.

19 Q. Was Brian Lillo's calling Tori to

20 come closer while he was operating a chainsaw

21 appropriate workplace behavior?

22 MR. FLANNERY: Objection.

23 MR. McGOVERN: Objection.

24 MR. McDERMOTT: Objection.

25 A. Probably not.

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2 trees.

3 Q. The only people in the highway

4 department?

5 A. Yes, that go up in the bucket truck

6 and cut trees on a daily basis.

7 Q. Have you ever seen a certificate of

8 some sort, a certification of some sort?

9 A. No.

10 Q. Did anybody tell you they were the

11 only two people certified?

12 A. Did anyone tell me? No.

13 Q. In fact --

14 A. I knew going into the tree crew,

15 they were the only two.

16 Q. You knew that how?

17 A. Just from being at the highway

18 department.

19 Q. Okay.

20 Do you recall Tori ever going up in

21 the bucket?

22 A. I believe once or twice, just to

23 check it out.

24 Q. Was she certified?

25 A. To go up in the bucket, I believe

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1 R. KLEIN

2 MR. FLANNERY: Objection.

3 A. Issues in my presence?

4 Q. Yeah.

5 Do they get along?

6 A. There were times they did not get

7 along.

8 Q. Had they been good friends?

9 MR. FLANNERY: Objection.

10 A. At times, yes.

11 Q. Do you have any idea if anything

12 happened between them?

13 A. I don't know what happened between

14 them.

15 Q. Do you know if Mr. Salvo had any

16 interest in Tori romantically?

17 MR. FLANNERY: Objection.

18 A. I have no idea.

19 Q. He never said anything to you about

20 it?

21 A. No.

22 Q. Did she ever say anything to you

23 about Dave Salvo?

24 A. No.

25 Q. Okay.

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1 R. KLEIN

2 you don't have to certified.

3 Q. To your knowledge, what do you have

4 to be certified to do?

5 A. Actually, to do it at the highway

6 department, you don't have to be certified. To

7 cut for O & R, you have to be certified.

8 Q. We're not talking about O & R here,

9 are we?

10 A. No.

11 Q. So what does Mr. DiZenzo's memo

12 about Mr. Lillo being certified on operation of

13 our tree truck mean?

14 MR. FLANNERY: Objection.

15 A. To be honest, I don't know.

16 Q. Means nothing, doesn't it?

17 A. You don't have been certified to go

18 up in a tree truck, as far as I know.

19 Q. Thank you. Okay.

20 Bear with me. I'm trying to move

21 ahead quickly.

22 A. Okay.

23 Q. Did Mr. Salvo and Ms. Malone have

24 any issues with each other in your presence?

25 MR. McDERMOTT: Objection.

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1 R. KLEIN

2 Let's go back -- we're going to just

3 finish it up. I want to show you a couple more

4 videos.

5 MR. COHEN: Exhibit 10, please,

6 Helen.

7 (Exhibit 10, video, marked for

8 identification.)

9 MR. COHEN: This is a video. And

10 here we go.

11 (Video playing.)

12 BY MR. COHEN:

13 Q. Had you seen this video before?

14 A. Yes, from my attorney.

15 Q. Okay.

16 Do you know who took the video?

17 A. No. I would guess -- no, I don't

18 know.

19 Q. Okay.

20 Were you present when it was filmed?

21 A. I do not recall this.

22 Q. Who is in the video?

23 A. Dave Salvo.

24 Q. And what's going on?

25 A. He's doing squats with a chainsaw